

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Samex Environmental Services, Inc.
7951 Airway Road, Suite-A
San Diego, California 92154

EPA ID No. CAR000113324

Respondent.

Docket HWCA No. 2006-1209

STIPULATION AND ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and Samex Environmental Services, Inc. (Respondent) enter into this Stipulation and Order (Order) and agree as follows:

1. A dispute exists regarding the allegations in the Enforcement Order issued by the Department on January 25, 2007 (Attached as Exhibit 1.)
2. The parties wish to avoid the expense of further litigation and to ensure prompt action to achieve the Schedule for Compliance below.
3. Jurisdiction exists pursuant to Health and Safety Code section 25187.
4. Respondent waives any right to a hearing in this matter.
5. This Order shall constitute full settlement of the violations alleged in the Enforcement Order, but does not limit the Department from taking appropriate enforcement action concerning other violations.

SCHEDULE FOR COMPLIANCE

6. Respondent shall comply with the following:

6.1.1. Respondent shall use leak proof and structurally sound containers to store and transport hazardous wastes. Respondent must use plastic liners, as required, when putting hazardous waste in super sac containers. Furthermore, Respondent shall keep all hazardous waste containers closed unless adding or removing wastes. Said containers must be free of holes and gaps. Respondent must use plastic liners inside the super sac containers to prevent releases of polishing lint, a hazardous waste. On October 16, 2006, Respondent provided an acceptable written response describing the corrective actions taken to prevent future reoccurrences of this alleged violation.

6.1.2. Respondent shall provide a written response explaining how 26 super sac containers manifested as: "Non-RCRA Hazardous Waste Solid" was in fact a RCRA hazardous waste. In addition, Respondent shall use a manifest and designate a facility that is authorized to receive RCRA hazardous waste.

6.2. Submittals: All submittals from Respondent pursuant to this Order shall be sent simultaneously to:

Yvonne Sanchez, Chief
Enforcement Cypress Branch
Enforcement and Emergency Response Program
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

And to:

Juan Jimenez, Unit Chief
San Diego Border Unit
Enforcement Cypress Branch
Enforcement and Emergency Response Program
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

6.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent

in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

6.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

- a. Modify the document as deemed necessary and approve the document as modified; or
- b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

6.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

6.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section

shall be extended for the term of such Stop Work Order.

6.7. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

6.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

6.9. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives

to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

6.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 9.3 in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

6.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

6.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

6.13. Extension Approvals: If the Department determines that good cause

exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

7. Respondent shall pay the Department a total penalty of \$ 21,000.00. Of the total due, \$8,000.00 is a penalty; \$ 8, 000.00 as reimbursement of the Department's costs and \$5,000.00 shall be a credit for a Supplemental Environmental Project (SEP). The penalty and administrative costs shall be paid within a one-year period as follows: On or before 120 days of the effective date of this Order, respondent shall pay the first installment \$6,000.00. The second installment for \$5,000.00 is due on or before 120 days after the first installment. The third installment for \$5,000.00 is due on or before 120 days after the second installment. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number HWCA 2006-1209 on the check. Respondent shall transmit the penalty payments to:

Department of Toxic Substances Control
Accounting Office
1001 I Street
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

Yvonne Sanchez, Branch Chief
Enforcement Cypress Branch
Enforcement and Emergency Response Program
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

And to:

Juan Jimenez, Unit Chief

San Diego Border Unit
Enforcement Cypress Branch
Enforcement and Emergency Response Program
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

8. Supplemental Environmental Projects: Respondent shall, within 90 days of the effective date of this Order, submit a SEP Proposal that shall describe the specific actions to be performed by the Respondent, and provide for a reliable and objective means to verify that the Respondent has timely completed the project. In the event that Respondent shall fail to submit such a Proposal, or if the submitted Proposal is not acceptable to the Department, Respondent shall make a \$5,000 contribution to the Western States Project. Such contribution shall be made not late than 120 days from the effective date of this order. The Department shall give Respondent a credit of \$ 5,000.00 for a Supplemental Environmental Project (SEP). If the SEP costs do not total \$ 5000.00, Respondent shall pay a penalty equal to the difference of what was expended and the \$ 5000.00.

OTHER PROVISIONS

9.1. Additional Enforcement Actions: By agreeing to this Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Order.

9.2. Penalties for Noncompliance: Failure to comply with the terms of this

Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

9.3 Parties Bound: This Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

9.4. Effective Date: The effective date of this Order is the date it is signed by the Department.

9.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: August 10, 2007

Original signed by Larry Burton
Mr. Larry Burton, V.P. Operations
Samex Environmental Services, Inc.

Dated: August 10, 2007

Original signed by Juan Jimenez
Mr. Juan Manuel Jimenez, Chief
San Diego Border Unit
Enforcement and Emergency Response Program
Department of Toxic Substances Control

Exhibit 1

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

SAMEX ENVIRONMENTAL
SERVICES, INC.
7951 AIRWAY ROAD, SUITE-A
SAN DIEGO, CALIFORNIA 92154
EPA ID NO. CAR000113324

Respondent.

Docket No. HWCA 2006-1209

ENFORCEMENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to Samex Environmental Services, Inc. (Respondent).

1.2. Generator. Respondent is the Importer of Record for hazardous waste generated in Mexico. The hazardous waste is imported into the United States of America for treatment and disposal.

1.3. Transporter. For the purposes of transportation of hazardous waste shipments, Respondent uses a transporter company called Hazardous Material Transportation, Inc. (HMT), with EPA I.D. No. CAR 000054551 and DTSC transporter registration No. 3843. HMT operates a fully permitted ten-day transfer station at the same location as Respondent's offices, 7951 Airway Road, Suite-A, San Diego, California 92154. HMT and Respondent are related companies with identical ownership.

1.4. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

DETERMINATION OF VIOLATIONS

2. Based upon observations made and evidence obtained during its February 24, 2006, truck stop inspection at United States Custom and Border Protection Calexico East Port of Entry as well as on March 1, 2006, and August 8, 2006, truck stop inspections at the United States Custom and Border Protection, Otay Mesa Port of Entry, the Department has determined that:

2.1. Respondent violated California Code of Regulations, title 22, section 66261.7(r), in that on or about March 1, 2006, Respondent presented two (2) 55-gallon drums containing pourable liquids comprised of paint related material, flammable waste. Respondent failed to properly manage containers of hazardous waste (paint related material, flammable liquid) which were not empty.

2.2. Respondent violated California Health and Safety Code, section 25160, in that, on or about March 1, 2006, Respondent transported at least two 55 gallon drums containing hazardous wastes without preparing and carrying a Uniform Hazardous Waste Manifest.

2.3. Respondent violated California Code of Regulations, title 22, section 66262.11, in that on or about March 1, 2006, Respondent presented 2 (two) 55 gallon drums containing pourable liquids comprised of paint related material, flammable

liquid that was not characterized or managed as a hazardous waste. Respondent failed to properly characterize containers of hazardous material which were not empty.

2.4. Respondent violated California Code of Regulations, title 22, sections 66264.31 and 66263.13(b) in that on or about August 8, 2006, Respondent failed to properly manage twenty-six (26) super sac containers that contained polishing lint, a hazardous waste. The super sac containers were torn and ripped thus causing releases into the environment

2.5. Respondent violated California Code of Regulations, title 22, section 66265.173(a) in that on or about August 8, 2006, Respondent failed to keep containers closed. Respondent imported twenty-six (26) super sac containers that contained polishing lint, a hazardous waste, that were torn and had holes. The holes were from 2-6 inches wide, which resulted in releases of hazardous waste to the environment.

2.6. Respondent violated California Code of Regulations, title 22, section 66262.11, in that on or about August 8, 2006, Respondent failed to determine if a waste was a RCRA hazardous waste. Analytical lab results of a sample taken show a concentration of 9.7 ppm lead. The TCLP threshold limit is 5.0 ppm.

2.7. Respondent violated California Code of Regulations, title 22, section 66262.20(b), in that on or about August 8, 2006, Respondent failed to designate on the Hazardous Waste Manifest a facility which is authorized to receive RCRA hazardous waste. The facility listed on the manifest, Copper Mountain Landfill in Welton, Arizona, is authorized to receive Non-RCRA hazardous waste only.

SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination of Violations, IT IS HEREBY
ORDERED THAT:

3.1.1. Effective immediately, Respondent shall not import containers holding hazardous liquids (paint related material, flammable liquids), that can be poured or otherwise removed without first declaring the containers as a hazardous waste.

3.1.2. Effective immediately, Respondent shall not import hazardous wastes without a Hazardous Waste Manifest.

3.1.3. Effective immediately, Respondent shall accurately characterize all hazardous waste and manage it as such.

3.1.4. Effective immediately, Respondent shall keep all hazardous waste containers closed and free of holes/gaps. Respondent shall use plastic liners inside the super sacs to prevent releases of the fine powders.

3.1.5. Within 30 days of the effective date of this order, Respondent shall provide a written statement response explaining how 26 super sac containers manifested as "Non-RCRA Hazardous Waste Solid" were in fact a RCRA hazardous waste and explaining in detail the measures undertaken to prevent a re-occurrence of this problem.

3.1.6. Effective immediately, Respondent shall manifest all RCRA hazardous waste to an authorized facility. Respondent shall immediately provide copies of the Hazardous Waste Manifest used to dispose of hazardous waste polishing lint and polishing wheels to the Department.

3.2. Submittals. All submittals from a Respondent pursuant to this Order shall be sent simultaneously to:

Yvonne Sanchez, Chief
Cypress Branch
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

Juan Manuel Jimenez, Chief
San Diego Border Unit
Statewide Compliance Division
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

And to:

James Grace, Esq.
Staff Counsel
Office of Legal Affairs
Department of Toxic Substances Control
8800 Cal Center Dr.
Sacramento, California 95826

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order

fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

- a. Modify the document as deemed necessary and approve the document as modified, or
- b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

3.7. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.9. Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents

to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

3.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

3.12. Extension Request: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

OTHER PROVISIONS

4.1. Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

4.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any

costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

4.3. Parties Bound: This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.4. Time Periods. "Days" for purposes of this Order means calendar days.

PENALTY

5. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at \$31,700.00. Payment is due within 30 days from the effective date of the Order. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number HWCA 2006-1209. Respondent shall deliver the penalty payment to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Yvonne Sanchez, Chief
Cypress Branch
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

Juan Manuel Jimenez, Chief
San Diego Border Unit
Statewide Compliance Division
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

And to:

James Grace, Esq.
Staff Counsel
Office of Legal Affairs
Department of Toxic Substances Control
8800 Cal Center Dr.
Sacramento, California 95826

RIGHT TO A HEARING

6. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent.

EFFECTIVE DATE

7. This Order is final and effective twenty days from the date of mailing, which is the date of the cover letter transmitting the Order to Respondent, unless Respondent requests a hearing within the twenty-day period.

Date of Issuance January 25, 2007

Original signed by Juan Jimenez

Juan Manuel Jimenez, Chief
San Diego Border Unit
Statewide Compliance Division
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123